

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9121 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No.

MUKESH VALJIBHAI VAGHELA

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for Petitioner

MR.H.L.JANI,AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 22/06/98

ORAL JUDGEMENT

The petitioner has challenged in this petition under Article 226 of the Constitution of India the order of his detention dated 12-12-1997 passed by the Commissioner of Police, Ahmedabad under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as "the Act"). In the grounds of detention, the detaining authority has relied on seven prohibition cases filed against the detenu and

the statements of four witnesses for the alleged offences recorded on 9-11-97 and 15-11-97, wherein the witnesses have stated to have been beaten by the detenu on the ground that they are the informants of police and are preventing their customers. Not only that but the petitioner had also rushed towards the crowd with open knife and when the crowd started running helter-skelter, the even tempo of life was disturbed. With this material on record, the detaining authority was of the view that the petitioner is a boot-legger within the meaning of Section 2(b) of the Act and with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it was necessary to detain him and, therefore, the impugned order of detention came to be passed against the petitioner.

On behalf of the petitioner, it was contended that even if the allegations made against the petitioner are accepted as true, it is too much to brand him as a boot legger. The Supreme Court in Piyush Kantilal Mehta vs Commissioner of Police, Ahmedabad City, AIR 1989 SC 491 on similar allegations made against the detenu in that case has held that the offences alleged against the detenu in the order of detention and also the allegations made by the witnesses could not be said to have created any feeling of insecurity or panic or terror among the members of the public of the area giving rise to the question of maintenance of public order. The order of detention could not therefore be upheld. In view of this decision, it is not possible for me to uphold the order of detention in the present case. The allegations made against the petitioner by the witnesses are minor incidents of beating by the petitioner and which could not be said to create feeling of insecurity among the general public. In view of this, the order of detention is vitiated.

In the result, this petition is allowed. The order of detention dated 12-12-1997 is quashed and set aside. The detenu Mukesh Valjibhai Vaghela is ordered to be released forthwith if not required for any other offence. Rule is made absolute to the aforesaid extent with no order as to costs.

Verified copy